

**Before the
Federal Communications Commission
Washington, D.C. 20554**

RECEIVED

OCT 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's Rules) MM Docket No. 97-138
regarding the main studio and)
local public inspection files of)
broadcast television and radio stations)

To: The Commission

Petition for Partial Reconsideration or Clarification

Cornerstone Broadcasting Corporation ("Cornerstone"), licensee of AM broadcast station WMFJ, Daytona Beach, Florida, and noncommercial educational FM broadcast stations WJLU, New Smyrna Beach, Florida, and WJLH, Flagler Beach, Florida, through its counsel and pursuant to Section 405 of the Communications Act and Section 1.429(a) of the Rules, hereby asks for reconsideration in part of the FCC's *Report and Order* in MM Docket 97-138, FCC No. 98-175, released August 11, 1998 (the "R&O").¹

The revised rules allow a licensee to locate its main studio anywhere within the reliable service contour of any station licensed to the same community or within a fixed 25-mile radius from the community of license. In addition, the FCC will allow a station to keep its public inspection file at the main studio, even where the main studio is located outside the community of license. The R&O extends this permission to noncommercial educational broadcast stations operating under a waiver of the main studio rules, "wherever located."

¹ A synopsis of the R&O was published at 63 *Fed. Reg.* 49487 (September 16, 1998).

No. of Copies rec'd
List ABCDE

D+9

R&O, ¶ 21 and n. 53. On reconsideration, Cornerstone asks the FCC to clarify that stations which received a prior waiver of the main studio rules that is no longer necessary to permit their present operation are relieved of any obligations attached as conditions to the waiver.

WJLH(FM) operates as a satellite of WJLU(FM), pursuant to an FCC staff decision on June 17, 1997 (Attachment A hereto), granting (to Cornerstone's predecessor, Cornerstone Community Radio, Inc. ("CCR"), a waiver of the former requirement of Section 73.1125 of the Rules to maintain a main studio at a location within the principal community contour.² One condition on that waiver was that CCR continue to maintain the WJLH(FM) public inspection file in Flagler Beach. Other conditions included regular visits to Flagler Beach by CCR's management, establishment of a Flagler Beach Citizens Advisory Board, periodic broadcasts of public affairs programming concerning Flagler Beach, inclusion of Flagler Beach events in regular WJLU(FM) programming, and maintenance of toll-free telephone service between Flagler Beach and the WJLU(FM) main studio in Port Orange, Florida. Cornerstone has continued to observe these conditions since it acquired WJLH on June 23, 1997.

Cornerstone maintains main studios for WMFJ(AM) and WJLU(FM) at Port Orange Florida, which is within 25 miles of the Flagler Beach reference point.³ The new rules

² A "satellite" station meets all of the requirements of the FCC's technical rules but originates no programming; rather, it rebroadcasts the programming of the parent station. See *Amendment of Multiple Ownership Rules*, 3 P&F RR2d 1554, 1562 (1964).

³ WJLH is the only station licensed to Flagler Beach. Its reliable service contour does not extend to Port Orange; hence, permission under the new rules to locate its main studio there rests on the alternative permitted 25-mile radius.

clearly permit Cornerstone to co-locate the WJLH(FM) main studio with the WMFJ-WJLU(FM) studios at Port Orange and keep the WJLH(FM) public file at Port Orange.

The FCC has granted numerous similar waivers both before and since the WJLH(FM) waiver.⁴ Other than the location of the public file, however, the R&O does not directly address the conditions the FCC has customarily attached to such waivers, including the WJLH waiver.

In a footnote, the R&O states:

The action we take today will not affect any stations operating pursuant to a waiver of these rules. Of particular note are licensees of noncommercial educational stations operating their stations as satellites of a main station. . . . With respect to main studio waiver requests, noncommercial stations have been given distinct treatment from commercial stations. . . . We will continue to follow these waiver criteria, although we decline to incorporate them into our rule, as Moody requests. . . . Absent a waiver, however, the rules apply equally to commercial and noncommercial stations.

R&O, ¶ 7, n. 18. This statement offers no illumination of the status of stations which received a waiver of the old rule but do not require a waiver under the rules as they have now been revised.

One possible interpretation of the footnote is that all such waivers, and the conditions attached to the waivers, continue in full force and effect. It seems unlikely, however, that this is what the FCC intended.

The WJLH waiver, as was the case with waivers granted to numerous other noncommercial educational stations, was based on the FCC's recognition of the public

⁴ E.g., *Letter to Jeffrey D. Southmayd* (File No. BPED-940823IC); *Letter to Russell C. Powell* (File No. BPED-950131MB); *Letter to Matthew H. McCormick* (BPED-950331MA).

interest benefits of centralized operations for noncommercial stations given their limited funding. It would be incongruous, to say the least, if those stations which previously received a waiver continued to be subject to conditions which divert time and resources from the most important element of local service -- programming -- while stations which never could have justified a waiver enjoyed the full, unrestricted benefit of the newly relaxed rules.

Some of the conditions on the WJLH(FM) and other waivers -- commitments to local public affairs programming and coverage of local events -- only restate the licensee's obligation, codified in Section 73.3527 of the Rules, to identify and treat community issues in its programming. Provision of toll-free telephone service is also a requirement under the rules (Section 73.1125(c)). Perpetuating such conditions because they were once part of a waiver will not enhance the public interest. Logically, also, licensees -- with or without a community advisory board -- will take whatever steps are reasonably required to enable them to fulfill their programming obligations. But the decision how to respond to local issues should be arrived at through the licensee's reasonable, good faith judgments, not by mandating artificial mechanisms imposed on the licensee's decision-making process as a condition of a waiver that is no longer required. See *Second Report and Order in BC Docket No. 79-219 ("Deregulation of Radio")*, 55 P&F R.R. 2d 1401, 1409 (1984) ("[w]e are not concerned with how an applicant or broadcaster becomes aware community issues so long as such issues are identified and adequate responsive programming is offered or proposed").

Accordingly, the FCC should hold that, under its revised main studio rules, licensees previously granted waivers no longer required to permit current operations are relieved from the conditions imposed in connection with such waivers. Moreover, those licensees should be permitted to notify the FCC that their operations conform to the general rules simply by informing the FCC of the main studio location in the manner specified in Section 73.1125(c)(1) of the Rules.

Respectfully submitted,

CORNERSTONE BROADCASTING
CORPORATION

By 

J. Geoffrey Bentley

J. Geoffrey Bentley, P.C.
BENTLEY LAW OFFICE
P.O. Box 807
Herndon, Virginia 20172-0807
(703)793-5207

Its Attorney

October 16, 1998

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

JUN 17 1997

IN REPLY REFER TO:
1800B3-ALM

J. Geoffrey Bentley, Esq.
Bentley Law Office
Post Office Box 807
Herndon, Virginia 20172-0807

Re: License for WJLH(FM), Flagler Beach, Florida, BLED-960618KB

Dear Mr. Bentley:

The staff has under consideration the application of Cornerstone Community Radio, Inc. ("Cornerstone") for a license to cover the construction permit for new noncommercial educational ("NCE") FM station WJLH(FM), Flagler Beach, Florida (File No. BLED-960618KB). On April 18, 1997 Cornerstone amended this application to request a waiver of the Commission's main studio requirement, see 47 C.F.R. § 73.1125, in order to operate the Flagler Beach station as a satellite of its NCE station WJLU(FM), New Smyrna Beach, Florida.¹ For the reasons set forth below, we will waive 47 C.F.R. § 73.1125 and grant Cornerstone's application for a license to cover its construction permit.

Section 73.1125(a) requires each broadcast station to maintain a main studio within the station's principal community contour to ensure that the station will serve the needs and interests of the residents of its community of license. Amendment of Sections 73.1125 and 73.1130, 3 FCC Rcd 5024, 5027 (1988). However, under Section 73.1125(a)(4), the Commission will waive this requirement where "good cause" exists to do so and where the proposed studio location "would be consistent with the operation of the station in the public interest." Each waiver request by an NCE station seeking to operate as the satellite of another NCE station is considered on a case-by-case basis. The Commission has recognized the benefits of centralized operations for NCE stations, given their limited funding, and thus found "good cause" exists to waive the main studio location requirement where satellite operations are proposed. Id. A satellite station must, however, demonstrate that it will meet its local service obligation to satisfy the Section 73.1125 "public interest" standard. Id.

Cornerstone's request is based on the economies of scale which would be realized by grant of its waiver. We agree and conclude that there is "good cause" to waive 47 C.F.R. § 73.1125(a)(4) in these circumstances. Cornerstone proposes to operate the Flagler Beach station as a satellite of WJLU(FM), New Smyrna Beach, Florida, approximately 30 miles

¹A "satellite" station meets all of the Commission's technical rules, however, it originates no programming and instead rebroadcasts the parent station's programming. See Amendment of Multiple Ownership Rules, Memorandum Opinion and Order, 3 RR2d 1554, 1562 (1964).

from Flagler Beach. The Commission expects the licensee of a satellite station to take adequate measures to maintain its awareness of the satellite community's needs and interests. To that end, Cornerstone has pledged to: (1) pay regular visits to Flagler Beach by Cornerstone management; (2) establish a Citizens Advisory Board in Flagler Beach which will meet with Cornerstone management twice a year; (3) arrange for periodic broadcasts of public affairs programs responding to local issues and concerns in Flagler Beach; (4) include Flagler Beach community events in the programming of WJLU(FM); (5) maintain the WJLH(FM) Public Inspection File in Flagler Beach; and (6) maintain a toll-free telephone number between Flagler Beach and the WJLU(FM) main studio in Port Orange, Florida. In these circumstances, we are persuaded that Cornerstone will meet its local service obligations and thus, that grant of the requested waiver is consistent with the public interest.

Accordingly, the application of Cornerstone Community Radio, Inc. for a license to cover the construction permit of WJLH(FM), BLED-960618KB, and its request for waiver of 47 C.F.R. § 73.1125 ARE GRANTED. The authorization will be forwarded under separate cover.

Sincerely,



Linda Blair, Chief *for*
Audio Services Division
Mass Media Bureau